

³ Docket No. 13-316 (issued June 20, 2013).

that appellant did not have a ratable hearing loss. The Board also found that OWCP should have requested that the district medical adviser address whether hearing aids should be authorized. Furthermore, the Board found that OWCP had abused its discretion, in its November 1, 2012 decision, by refusing to reopen the case for further consideration of the merits regarding the issue of ratability of appellant's hearing loss, including review of the September 28, 2011 report of Dr. J. Scott Robertson, a Board-certified otolaryngologist, and the October 9, 2012 letter from audiologist Jennifer Smith, regarding the September 28, 2011 audiogram.

OWCP thereafter issued two decisions dated December 12, 2014. The first decision, was labeled as an acceptance, and again accepted sensorineural bilateral hearing loss and thereafter found that the medical evidence of record established that appellant would benefit from hearing aids. The second decision dated December 12, 2014 was identified as a merit review. This decision noted the Board's prior remand of the case, but only made findings regarding the issue of appellant's entitlement to hearing aids, not the issue of ratability of appellant's hearing loss. OWCP mentioned in passing that appellant's hearing loss had previously been determined to be nonratable. OWCP disregarded the Board's instructions in its June 20, 2013 decision to conduct a merit review of the evidence regarding the ratability of appellant's hearing loss, with consideration of Dr. Robertson's September 28, 2011 report. As the issue of ratability of appellant's hearing loss was before OWCP at the time of its December 12, 2014 decision, appellant was entitled to a proper decision with findings of fact and a statement of reasons.⁴

The Board finds OWCP erred by failing to conduct a merit review regarding the ratability of appellant's hearing loss, pursuant to the Board's June 20, 2013 instructions.

⁴ 20 C.F.R. § 10.126.

IT IS HEREBY ORDERED THAT the December 12, 2014 decision of the Office of Workers' Compensation Programs be set aside and the case be remanded to OWCP for further proceedings consistent with this order.

Issued: April 20, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board